

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-151
SENATE BILL 548

AN ACT STRENGTHENING HUMAN TRAFFICKING LAWS, AUTHORIZING THE NORTH CAROLINA BOARD OF MASSAGE AND BODYWORK THERAPY TO REGULATE MASSAGE AND BODYWORK THERAPY ESTABLISHMENTS, REQUIRING MASSAGE AND BODYWORK THERAPISTS TO OBTAIN A STATEWIDE PRIVILEGE LICENSE, AND AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY WAYS TO IDENTIFY AND PROTECT VICTIMS OF HUMAN TRAFFICKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-43.11 reads as rewritten:

"§ 14-43.11. **Human trafficking.**

...

(b) A person who violates this section is guilty of a Class ~~F-C~~ felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class ~~E-B2~~ felony if the victim of the offense is a minor.

...."

SECTION 2.(a) G.S. 14-202.10(2) reads as rewritten:

"(2) "Adult establishment" means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, or adult live entertainment business, ~~or massage-business~~ as defined in this section."

SECTION 2.(b) G.S. 14-202.10(7) and G.S. 14-202.10(8) are repealed.

SECTION 2.(c) G.S. 14-202.11 is amended by adding a new subsection to read as

follows:

"(a1) No person shall permit the practice of massage and bodywork therapy, as defined in Article 36 of Chapter 90 of the General Statutes, in an adult establishment."

SECTION 3.(a) G.S. 90-621 reads as rewritten:

"§ 90-621. **Declaration of purpose.**

The purpose of this Article is to ensure the protection of the health, safety, and welfare of the citizens of this State receiving massage and bodywork therapy services. This purpose is achieved ~~by establishing~~by:

- (1) Establishing education and testing standards that ensure competency in the practice of massage and bodywork therapy. Mandatory licensure of those engaged in the practice of massage and bodywork therapy assures the public that each individual has satisfactorily met the standards of the profession and continues to meet both the ethical and competency goals of the profession.
- (2) Establishing standards for establishments that provide massage and bodywork therapy services. Mandatory licensure of those who own or operate massage and bodywork therapy establishments assures the public that these establishments provide legal, professional services and employ licensed massage and bodywork therapists who have satisfactorily met the



standards of the profession and continue to meet both the ethical and competency goals of the profession."

SECTION 3.(b) G.S. 90-622 reads as rewritten:

"§ 90-622. Definitions.

The following definitions apply in this Article:

- (1) Accreditation. – Status granted to a postsecondary institution of higher learning that has met standards set by an accrediting agency recognized by the Secretary of the United States Department of Education. The accreditation for massage and bodywork schools may be institutional or programmatic in nature.
- (1a) Board. – The North Carolina Board of Massage and Bodywork Therapy.
- (2) Board-approved school. – Any massage and bodywork therapy school or training program in this State or another state that is not otherwise exempt from Board approval, that has met the standards set forth in this Article, and been granted approval by the Board.
- (2a) Business name. – The name under which the owner applies for the establishment license to provide massage therapy, if different from the name of the owner.
- ~~(2a)~~(2b) Criminal history record check. – A report resulting from a request made by the Board to the North Carolina Department of Public Safety for a history of conviction of a crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice massage and bodywork therapy.
- (3) Massage and bodywork therapy. – Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:
 - a. Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.
 - b. Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.
 - c. The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.
- (3a) Massage and bodywork therapy establishment. – Any duly licensed site or premises in which massage and bodywork therapy is practiced. This term does not include any of the following:
 - a. On-site massage performed at the location of the customer.
 - b. Stand-alone devices, such as chairs, that are operated by the customer.
 - c. Establishments located within the confines of a hospital, nursing home, or other similar establishment or facility licensed or otherwise regulated by the Department of Health and Human Services.
 - d. Massage and bodywork therapy provided by a sole practitioner.
 - e. A student clinic operated by a Board-approved school or a massage and bodywork therapy program offered by community colleges in North Carolina that are accredited by the Southern Association of Colleges and Schools or massage and bodywork therapy programs offered by a degree or diploma granting college or university accredited by any accrediting agency that is recognized by the United States Department of Education and licensed by the North Carolina Community College System or The University of North Carolina

Board of Governors or exempt from such licensure pursuant to G.S. 116-15(c).

f. Chiropractic physician offices that provide massage and bodywork therapy only by massage and bodywork therapists currently licensed in North Carolina.

~~(3a)~~(3b) Massage and bodywork therapy school. – Any educational institution that conducts a training program or curriculum for a tuition charge, which is intended to teach adults the knowledge, skills, and abilities necessary for the safe, effective, and ethical practice of massage and bodywork therapy.

(4) Massage and bodywork therapist. – A person licensed under this Article.

(4a) Owner. – The person, sole proprietor, partnership, limited partnership, or corporation that operates the massage and bodywork therapy establishment.

(5) Practice of massage and bodywork therapy. – The application of massage and bodywork therapy to any person for a fee or other consideration.

(6) Sole practitioner. – A single licensed massage and bodywork therapist offering massage or bodywork therapy services from a space the licensed massage and bodywork therapist controls and from which only the licensed massage and bodywork therapist offers and provides the services."

SECTION 3.(c) The catch line of G.S. 90-623 reads as rewritten:

"§ 90-623. License to practice required."

SECTION 3.(d) The catch line of G.S. 90-624 reads as rewritten:

"§ 90-624. Exemptions. ~~Activities not requiring a license to practice.~~"

SECTION 3.(e) Subdivision (9) of G.S. 90-626 reads as rewritten:

"(9) Adopt, amend, or repeal any ~~rules of the following rules:~~

a. Rules necessary to carry out the purposes of this ~~Article and~~Article.

b. Rules necessary to carry out the duties and responsibilities of the Board, including ~~rules the following:~~

1. Rules related to the approval of massage and bodywork therapy schools, continuing education providers, examinations for licensure, and the practice of advanced techniques or specialties, and ~~massage and bodywork therapy establishments.~~ specialties. Any rules adopted or amended shall take into account the educational standards of national bodywork and massage therapy associations and professional organizations.

2. Rules related to massage and bodywork therapy establishments."

SECTION 3.(f) G.S. 90-628(b) reads as rewritten:

"(b) The Board may impose the following fees up to the amounts listed ~~below:~~below for a license to practice massage and bodywork therapy:

(1) Application for license\$20.00

(2) Initial license fee150.00

(3) License renewal100.00

(4) Late renewal penalty75.00

(5) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008.

(6) Duplicate license25.00

(7) Repealed by Session Laws 2008-224, s. 8, effective August 17, 2008."

SECTION 3.(g) G.S. 90-629 reads as rewritten:

"§ 90-629. Requirements for ~~licensure.~~licensure to practice."

Upon application to the Board and the payment of the required fees, an applicant may be licensed as a massage and bodywork therapist if the applicant meets all of the following qualifications:

- (1) Has obtained a high school diploma or equivalent.
- (2) Is 18 years of age or older.
- (3) Is of good moral character as determined by the Board.
- (4) Has successfully completed a training program consisting of a minimum of 500 in-class hours of supervised instruction at a Board-approved school.
- (5) Has passed a competency assessment examination that meets generally accepted psychometric principles and standards and is approved by the Board.
- (6) Has submitted fingerprint cards in a form acceptable to the Board at the time the license application is filed and consented to a criminal history record check by the North Carolina Department of Public Safety.
- (7) Demonstrates satisfactory proof of proficiency in the English language."

SECTION 3.(h) G.S. 90-629.1 reads as rewritten:

"§ 90-629.1. Criminal history record checks of applicants for ~~licensure~~licensure to practice and for ownership or operation of an establishment.

(a) All applicants for licensure to practice massage and bodywork therapy or to operate a massage and bodywork therapy establishment shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

...."

SECTION 3.(i) The catch line of G.S. 90-630.1 reads as rewritten:

"§ 90-630.1. Licensure to practice by endorsement."

SECTION 3.(j) G.S. 90-632 is recodified as G.S. 90-630.5 and reads as rewritten:

"§ 90-630.5. ~~License renewal and~~Renewal of license to practice and license to operate massage and bodywork therapy establishment; continuing education.

(a) The license to practice and the license to operate a massage and bodywork therapy establishment under this Article shall be renewed every two years.

(b) The continuing education requirement for the renewal of an initial license ~~renewal to practice~~ is as follows:

- (1) If the licensure period is two years or more, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.
- (2) If the licensure period is less than two years, but more than one year, each licensee shall submit to the Board evidence of the successful completion of at least 12 hours of study, as approved by the Board, since the initial licensure application date in the practice of massage and bodywork therapy.

(c) For subsequent renewals of a license ~~renewals to practice~~, each licensee shall submit to the Board evidence of the successful completion of at least 24 hours of study, as approved by the Board, since the previous licensure renewal submission date in the practice of massage and bodywork therapy."

SECTION 3.(k) Article 36 of Chapter 90 of the General Statutes is amended by adding new sections to read:

"§ 90-632.10. Massage and bodywork therapy establishment license required.

The Board shall license massage and bodywork therapy establishments in this State for the purpose of protecting the health, safety, and welfare of the public. Unless otherwise exempt from the Board licensure process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy establishment in this State unless it has first been licensed by the Board. The Board shall maintain a list of licensed massage and bodywork therapy establishments operating pursuant to this Article.

"§ 90-632.11. Requirements for massage and bodywork therapy establishment licensure.

(a) Any person who wishes to operate a massage and bodywork therapy establishment shall obtain a license from the Board by submitting a massage and bodywork therapy establishment licensure application accompanied by all of the following:

- (1) The applicable fee set forth in G.S. 90-632.14.
- (2) Proof of property damage and bodily injury liability insurance coverage in the name of the owner or, if the establishment is operated under a business name, in the name of both the owner and the business.
- (3) Prior licensure and disciplinary history, including verifications from all North Carolina licensing boards from which the owner holds or has held any health related professional license.
- (4) Fingerprint cards submitted in accordance with G.S. 90-629.1 at the time the license application is filed and consented to a criminal history record check by the Department of Public Safety.
- (5) Ownership information, including at least all of the following:
 - a. Type of ownership.
 - b. Name of owner.
 - c. Name of authorized representative.
 - d. Address of establishment.
 - e. Social Security number or federal tax identification number.
 - f. E-mail address.
 - g. Current phone number.
 - h. Hours of operation.
- (6) Proof of good moral character as determined by the Board.
- (7) Signature of all owners or authorized corporate representatives or both.
- (8) A successfully completed self-evaluation inspection report demonstrating compliance with this section and any rules adopted pursuant to G.S. 90-632.13.
- (9) Proof that the establishment employs, hires, or plans to employ or hire one or more massage and bodywork therapists who hold a current license from the Board.

(b) The application for licensure shall be submitted in the name of the owner or owners of the establishment. If the owner is a corporation, the application shall be submitted in the name of the corporation and shall be signed by a corporate representative.

"§ 90-632.12. Operation of a massage and bodywork therapy establishment under a name different than the owner; advertisement.

(a) An owner may operate a licensed massage and bodywork therapy establishment under a name other than the name of the owner, provided such name is submitted to the Board on the application for licensure.

(b) Any advertisement by the massage and bodywork therapy establishment shall include the establishment's business name and shall comply with 21 NCAC 30 .0404.

"§ 90-632.13. Rules for massage and bodywork therapy establishment license.

The Board shall establish rules for the licensure of massage and bodywork therapy establishments. These rules shall include at least all of the following:

- (1) Requirements for adequate, safe, and sanitary facilities.
- (2) Requirements for compliance with local building code requirements, State fire safety codes, and State health inspection codes necessary to ensure the safe and effective practice of massage and bodywork therapy.
- (3) Requirements for retention of client and ownership records.
- (4) A description of the process used by the Board to approve massage and bodywork therapy establishment licenses.
- (5) Requirements for initial and periodic inspections of massage and bodywork therapy establishments.
- (6) Requirements for transfer of a massage and bodywork therapy establishment license.

"§ 90-632.14. Fees for massage and bodywork therapy establishment license.

(a) The Board may impose the following fees up to the amounts listed below for massage and bodywork therapy establishment licensure:

- | | |
|--|----------------|
| <u>(1) Application for license</u> | <u>\$20.00</u> |
| <u>(2) Initial license fee</u> | <u>150.00</u> |
| <u>(3) License renewal</u> | <u>100.00</u> |
| <u>(4) Late renewal penalty</u> | <u>75.00</u> |
| <u>(5) Duplicate license</u> | <u>25.00</u> |
| <u>(6) Inspection of establishment</u> | <u>150.00</u> |

(b) All fees listed in subsection (a) of this section shall be paid in the form of a cashier's check, certified check, or money order made payable to the North Carolina Board of Massage and Bodywork Therapy and shall be nonrefundable.

"§ 90-632.15. Grounds for suspension, revocation, or refusal of a massage and bodywork therapy establishment license; notice and hearing; judicial review.

(a) The Board may deny, suspend, revoke, discipline, or refuse to approve a massage and bodywork therapy establishment for any of the following reasons:

- (1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a massage and bodywork therapy establishment license.
- (2) Engaging in any act or practice in violation of any of the provisions of this Article or of any of the rules adopted by the Board or aiding, abetting, or assisting any other person in the violation of the provisions of this Article or rules adopted by the Board.
- (3) Failure to require that its employees or independent contractors be currently licensed by the Board.
- (4) Operating a massage and bodywork therapy establishment without a license from this Board.
- (5) Engaging in conduct that could result in harm or injury to the public.
- (6) The employment of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- (7) Falsely holding out a massage and bodywork therapy establishment as licensed by this Board.
- (8) Failure to allow authorized representatives of the Board to conduct inspections of the massage and bodywork therapy establishment or refusing to make available to the Board, following written notice to the massage and bodywork therapy establishment, the requested information pertaining to the requirements for approval set forth in this Article.

- (9) Failure to notify the Board in writing within 30 days of any notification it receives from any state, local, or federal court or agency of a show cause action, probation action, or denial of licensure or approval.
- (10) The applicant for or holder of a massage and bodywork therapy establishment license has pleaded guilty, entered a plea of nolo contendere, or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(b) A refusal to issue, refusal to renew, or suspension or revocation of a massage and bodywork therapy establishment license under this section shall be made in accordance with Chapter 150B of the General Statutes.

"§ 90-632.16. Unlicensed massage and bodywork therapy prohibited at massage and bodywork therapy establishments.

A massage and bodywork therapy establishment shall not employ or contract with any person in this State to provide massage and bodywork therapy unless that person holds a current license to practice massage and bodywork therapy issued pursuant to this Article.

"§ 90-632.17. Sexual activity prohibited.

(a) Sexual activity or solicitation of sexual activity by any person or persons in any massage and bodywork therapy establishment is unlawful and prohibited.

(b) No owner shall engage in or permit any person or persons to engage in sexual activity in the owner's massage and bodywork therapy establishment. No owner shall engage in or permit any person or persons to use the owner's massage and bodywork therapy establishment to make arrangements to engage in sexual activity in any other place.

"§ 90-632.18. Enforcement; injunctive relief against massage and bodywork therapy establishments.

The Board may utilize the enforcement and injunctive relief set forth in G.S. 90-634 and assess civil penalties and disciplinary costs as provided in G.S. 90-634.1 to address violations of G.S. 90-632.10 through G.S. 90-632.17, any rules adopted pursuant to G.S. 90-632.13, or any other laws or rules applicable to the operation of a massage and bodywork therapy establishment.

"§ 90-632.19. Human trafficking public awareness sign.

The Board may require that a massage and bodywork therapy establishment prominently display on the premises in a place that is clearly conspicuous and visible to employees and the public a public awareness sign created and provided by the North Carolina Human Trafficking Commission that contains the National Human Trafficking Resource hotline information."

SECTION 3.(I) G.S. 90-634 reads as rewritten:

"§ 90-634. Enforcement; injunctive relief.

(a) It is unlawful for a person not licensed or exempted under this Article to engage in any of the following:

- (1) Practice of massage and bodywork therapy.
- (2) Advertise, represent, or hold out himself or herself to others to be a massage and bodywork therapist.
- (3) Use any title descriptive of any branch of massage and bodywork therapy, as provided in G.S. 90-623, to describe his or her practice.

(b) A person who violates subsection (a) of this section shall be guilty of a Class 1 misdemeanor.

(b1) Unless exempt from the approval process, it is unlawful for an individual, association, partnership, corporation, or other entity to open, operate, or advertise a massage and bodywork therapy school without first having obtained the approval required by G.S. 90-631.1.

(b2) An individual, association, partnership, corporation, or other entity that violates subsection (b1) of this section shall be guilty of a Class 3 misdemeanor.

(b3) It is unlawful for a person, individual, association, partnership, corporation, or other entity to do any of the following:

- (1) Employ, hire, engage, or otherwise contract with a person who is not licensed or exempted under this Article to provide massage and bodywork therapy services to the public.
- (2) Aid and abet any person not licensed or exempted under this Article in the practice of massage and bodywork therapy.
- (3) Advertise, represent, or hold out any person not licensed or exempted under this Article to others as a massage and bodywork therapist.
- (4) Describe the practice of any person not licensed or exempted under this Article or use any title descriptive of any branch of massage and bodywork therapy to reference any such person in violation of G.S. 90-623.

(b4) A person who violates subsection (b3) of this section shall be guilty of a Class 1 misdemeanor.

(c) The Board may make application to superior court for an order enjoining a violation of this Article. Upon a showing by the Board that a person, association, partnership, corporation, or other entity has violated or is about to violate this Article, the court may grant an injunction, restraining order, or take other appropriate action."

SECTION 4. G.S. 105-41(a) reads as rewritten:

"§ 105-41. Attorneys-at-law and other professionals.

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00).

- ...
- (2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, a massage and bodywork therapist, or another person who practices a professional art of healing.

...."

SECTION 5. In consultation with the North Carolina Human Trafficking Commission, the Department of Health and Human Services shall study the feasibility of training health care providers, emergency medical providers, and relevant first responders in human trafficking identification and response and preventative tools and methods. The Department shall report its findings and recommendations to the Joint Legislative Oversight Committee on Justice and Public Safety, the Joint Legislative Oversight Committee on Health and Human Services, the Human Trafficking Commission, and the Governor no later than February 1, 2018.

SECTION 6. Section 1 and Section 3(l) of this act become effective December 1, 2017, and apply to offenses committed on or after that date. Sections 2(a) through 2(c) and 3(a) through 3(k) of this act become effective October 1, 2017. Section 4 of this act is effective when it becomes law and applies to taxable years beginning on or after July 1, 2018. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2017.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 4:19 p.m. this 20th day of July, 2017